

## **Remarks**

The various parts of the Office Action are discussed below under similar headings. Also, while the Office Action indicates in Paragraph 7 that the action was final, the cover sheet of the Office Action did not indicate that action was final. Applicant telephoned examiner who indeed confirmed that the action was non-final.

### ***Claim Rejections - 35 USC § 102 and § 103***

Claims 17-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,760,588 to Bailey ("Bailey"). Claim 21 is rejected as being obvious over Bailey as applied to claims 17-20 and further in view of U.S. Patent No. 3,658,611 to Gray ("Gray"). Claim 22 is rejected as being obvious under 35 U.S.C. 103(a) over Bailey as applied to claims 17-20 and further in view of U.S. Patent No. 6,436,496 to Rackovan, et al. ("Rackovan"). Applicant has amended claim 17 to clarify the invention and respectfully submits that all pending claims are now in a condition for allowance.

Claim 17 states that "the length of the film exceeds the circumference of the battery by at least the width of the battery power indicator so that when the label is wrapped around the battery, the battery indicator is situated between two portions of the film." The office action indicates that "the clear film (54), the base laminate (30) and the base layer substrate (34) are considered as the base film" and thus somehow anticipate Claim 17.

Applicant submits, however, that the examiner has incorrectly interpreted Figure 7 of Bailey due to a mis-labeling in Figure 7 of the clear, film 54 as the base layer substrate 34. In Bailey, Reference numeral 54 refers to a clear film that is applied over the base laminate 30. (Col. 8, Lines 25-46, Figure 2.) As seen in Figure 2 of Bailey, the clear film 54 is not part of base layer 30. In Figure 7 of Bailey, as relied on by the examiner, the top layer of the illustrated battery tester label is twice labeled as 54, but also is also mis-labeled with reference numeral 34. This reference in Figure 7 to base layer substrate 34 is clearly erroneous because Figure 7 does not illustrate the embodiment including base laminate 30 and its components, including base layer substrate 34. (Col. 9, Line 65 -67 and Col. 10, Lines 3-8.) Thus, Figure 7 of Bailey does

not teach that "the length of the film exceeds the circumference of the battery by at least the width of the battery power indicator so that when the label is wrapped around the battery, the battery indicator is situated between two portions of the film." Instead, Figure 7, and the rest of Bailey, teaches the indicator being located between a substrate layer 20 and another, separate film – overcoat film 54. Also, Bailey does not indicate that film 54 could be used as an insulating film. Thus, Bailey does not anticipate claim 17, and applicant submits the claim is allowable.

Since pending claims 18-22 depend from claim 17, they necessarily include all of its limitations including those not taught by Bailey. Therefore, like claim 17, claims 18-Bailey, alone or in combination with the other cited art, does not anticipate or render obvious these dependent claims.


Based on this, applicant respectfully submits that these references alone or in combination do not teach claim 17 or dependent claims 18-2. These claims are thus allowable, and the applicant respectfully requests withdrawal of the rejections.

### **Conclusion**

This application is now in condition for allowance and an early action to that effect is earnestly solicited.

Respectfully submitted,

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